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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 92-253
)	
BAKCOR BROADCASTING, INC., Debtor)	
c/o DENNIS ELAM, TRUSTEE)	File No. BRH-900330VV
)	
For Renewal of License of)	
Station KKIK(FM))	
Lubbock, Texas)	
)	
and)	
)	
SOUTHWEST EDUCATIONAL MEDIA)	
FOUNDATION OF TEXAS, INC.)	File No. BPED-900629MK
)	
For A Construction Permit)	
For a New FM Station)	
Lubbock, Texas)	

To: Administrative Law Judge
Walter C. Miller

MASS MEDIA BUREAU'S
OPPOSITION TO MOTION TO ENLARGE ISSUES

1. On November 27, 1992, Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT") filed a Motion to Enlarge Issues in the above-captioned proceeding. SEMFOT seeks the addition of the following issues against Bakcor Broadcasting, Inc., Debtor, c/o Dennis Elam, Trustee ("Elam"):

To determine whether Elam engaged in a misrepresentation and/or abuse of the Commission's processes in submitting a proposed settlement of this proceeding which he never intended to honor, and if so, whether he is basically qualified to be a Commission licensee.

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To determine whether Elam has engaged in racial discrimination and sexual harassment as licensee of various radio stations and, if so, whether he is basically qualified to be a Commission licensee.

The Mass Media Bureau opposes addition of these issues and we submit the following comments.

2. On July 12, 1991, before this case was designated for hearing, SEMFOT and Elam filed a Joint Request for Approval of Settlement Agreement. On October 3, 1991, also pre-designation, SEMFOT and Elam filed a Supplement to Joint Request for Approval of Settlement Agreement, which sought approval of a revised settlement agreement. SEMFOT asserts that, as part of the revised agreement, SEMFOT sought dismissal of an application which it had filed in competition with Elam's renewal application for another station in Midland, Texas. In addition, the agreement called for the dismissal of Elam's above-captioned application, which would clear the way for a grant of SEMFOT's above-captioned application. If the Commission did not grant SEMFOT's above-captioned application "within a reasonable period of time," Elam agreed to sell KIKI(FM) to SEMFOT or its assigns. Until the Commission approved the settlement agreement, the parties agreed that SEMFOT would rebroadcast the signal of its station, KAMY, over KIKI(FM). Motion, at Ex. 1.

3. Noting that the dismissal of SEMFOT's Midland application was not conditioned upon approval of the settlement

agreement, the Commission, by letter dated January 3, 1992, dismissed SEMFOT's Midland application prior to acting upon the settlement agreement. Motion, at Ex. 2. By letter dated March 3, 1992, Elam advised SEMFOT that, if approval of the settlement agreement was not obtained by March 31, 1992, Elam would terminate its agreement to allow SEMFOT to rebroadcast KAMY on KKIK(FM). Elam's letter invited SEMFOT to assign its right to buy KKIK(FM), pursuant to the relevant provision in the settlement agreement.

4. SEMFOT alleges that Elam engaged in misrepresentation and abused the Commission's processes because it filed the settlement agreement without any intention of honoring it. SEMFOT theorizes that Elam's intention was to secure the dismissal of SEMFOT's competing application for Midland, Texas, and then rescind the settlement agreement. These allegations are totally lacking in support. Indeed, SEMFOT presents nothing save its own speculation as a basis for concluding that Elam did not intend to honor the settlement agreement. In point of fact, Elam's March 3, 1992, letter sets forth the reasons for terminating the rebroadcast agreement; namely, that an opposition to the agreement and a Commission investigation were causing a delay in approval of the agreement, so that Elam, as trustee, was unable either to sell KKIK(FM) or realize any income from its broadcasting. Because SEMFOT's request for a misrepresentation and abuse of process issue is based on surmise, it must be

denied. Scott and Davis Enterprises, Inc., 88 FCC 2d 1090 (Rev. Bd. 1982); Alabama Citizens for Responsive Public Television, Inc., 73 FCC 2d 615, 620 (1979).

5. SEMFOT states that Elam also failed to honor that portion of the agreement which permitted the sale of KKIK(FM) to SEMFOT or its assigns. Other than a vague reference to informing Elam that SEMFOT had elected to exercise this right, SEMFOT does not describe what, if any, steps it took to carry out this portion of the agreement, or what, if any, actions Elam took in failing to honor it.

6. SEMFOT also alleges that Elam misrepresented the facts to the bankruptcy court. This, like the allegation that Elam failed to honor the settlement agreement, is a private dispute for which the Commission is not the appropriate forum. Indeed, it appears that SEMFOT is pursuing its remedies in court. Until such time as the alleged misconduct is adjudicated, the Commission will not take cognizance of it. Policy Regarding Character Qualifications in Broadcast Licensing ("Character Statement"), 102 FCC 2d 1179, 1205 (1986).

7. SEMFOT requests an additional issue to determine whether Elam lacks the character qualifications to be a Commission licensee because he allegedly engaged in racial discrimination and sexual harassment. The Bureau opposes addition of this


issue. The racial discrimination charge is based on an incident during which Elam is said to have made an ethnically insensitive comment during a staff meeting at KLSF(FM), Amarillo, Texas. The incident is apparently under investigation by the Office of the U.S. Trustee, pursuant to a complaint by a Hispanic employee who witnessed the incident. The accusation of sexual harassment is based on statements made to the KLSF(FM) employee by an employee at another station. There is no declaration, or even identification, of the second employee.


8. The Bureau opposes addition of this issue. Merely because the alleged incidents took place at radio stations does not make them "FCC-conduct" for purposes of the Character Statement. However distasteful the conduct may be, it does not involve a violation of the Communications Act, or the Commission's rules or policies. Even the racial discrimination charge does not involve the kind of employment discrimination specifically proscribed by the Commission. The Commission considers non-FCC conduct relevant to an applicant's character qualifications only when it is adjudicated, which these incidents are not, and even then, only when it involves fraudulent statements to government agencies, certain felony convictions, or violation of broadcast-related anti-competitive and antitrust statutes. Character Statement, at 1195, 1205. Clearly, under the Character Statement, the alleged misconduct involved here would have no bearing on someone's character qualifications to be

a Commission licensee. Moreover, the sexual harassment charge is totally unsupported, since it is based on hearsay. No specific incident is described. The vague reference to what one person was told by an unidentified employee at another station does not make a prima facie case.

9. For the reasons set forth in the foregoing comments, the Bureau opposes SEMFOT's Motion to Enlarge Issues.

Respectfully submitted,
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December 10, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has, on this 10th day of December, 1992, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Opposition to Motion to Enlarge Issues" to:

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